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Consolidated Case Nos. 82-116 and 82-146

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GREATER WASHINGTON CENTRAL LABOR COUNCIL

and

FOOD AND ALLIED SERVICE TRADE COUNCIL
OF METROPOLITAN WASHINGTON,

Petitioners,

v.

DISTRICT OF COLUMBIA,

Respondent.

On Petitions For Writ Of Certiorari To The District Of Columbia Court Of Appeals

THE GREATER WASHINGTON BOARD OF TRADE MOTION FOR LEAVE TO INTERVENE AS A RESPONDENT OR, IN THE ALTERNATIVE, TO FILE A BRIEF AS *AMICUS CURIAE*

and

BRIEF AS INTERVENOR-*AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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QUESTIONS PRESENTED

1. Whether Congress, in enacting the District of Columbia Self-Government and Governmental Reorganization Act, authorized the Council of the District of Columbia to adopt a workers' compensation program for private employees in the District of Columbia.

2. Whether enactment of the Workers' Compensation Act by the Council of the District of Columbia violated the limitations on the Council's legislative authority enumerated in the District of Columbia Self-Government and Governmental Reorganization Act, that forbid the Council from enacting legislation that affects the authority and jurisdiction of federal agencies and officials.

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THE GREATER WASHINGTON BOARD OF TRADE MOTION FOR LEAVE TO INTERVENE AS A RESPONDENT OR, IN THE ALTERNATIVE, TO FILE BRIEF AS *AMICUS CURIAE*

The Greater Washington Board of Trade ("the Board") moves for leave to intervene as a party-respondent or, in the alternative, to file a brief as *amicus curiae* pursuant to Supreme Court Rule 36. In support of this motion the Board states the following:

Statement Of Facts

In 1980 the Council of the District of Columbia enacted, and the Mayor approved, the District of Columbia Workers' Compensation Act of 1979 ("the Act").*

Later that year, the Greater Washington Central Labor Council ("the Labor Council") initiated a suit in the Superior Court of the District of Columbia contending that in enacting the Act the Council had exceeded its authority under the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, codified in scattered sections of D.C. Code Ann. (1981) ("the Self-Government Act"). The Superior Court agreed with the Labor Council, and held the Act was *ultra vires*. The Board then moved to intervene as a defendant, but the Superior Court denied the Board's motion because of its view that the District of Columbia had adequately represented the Board's interests. See *District of Columbia* v. *Greater Washington Central Labor Council*, 442 A.2d 110, 114-15 (D.C. 1982).

The District of Columbia appealed the ruling on the merits, and the Board appealed the denial of its motion to intervene, to the District of Columbia Court of Appeals. That court consolidated the appeals, and permitted the Board to participate fully in the consolidated proceedings. It also permitted the Food and Allied Service Trade Council ("the Trade Council") to intervene as an appellee, notwithstanding the Trade Council had not sought to intervene in the trial proceedings. Thereafter, the Court of Appeals reversed the Superior Court's decision on the merits, but held that the denial of the Board's motion to intervene had not been an abuse of discretion. *Id.*, 442 A.2d, at 119-20.

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* D.C. Law 3-77, codified at D.C. Code Ann. § 36-301 *et seq.* (1981).

Although it believes the rulings below regarding its motion to intervene were in error the Board does not seek review of those rulings. However, because it opposes granting the petitions for a writ of certiorari, the Board respectfully moves this Court for leave to intervene in this proceeding or, in the alternative, for leave to file a brief as *amicus curiae*.

ARGUMENT

A

The Court Should Permit The Board To Intervene Because Otherwise Substantial Interests Of The Board Might Be Prejudiced.

This Court has permitted intervention in proceedings before it when otherwise the applicant's rights might be prejudiced. *See, e.g., United States* v. *Terminal Railroad Association*, 236 U.S. 194, 199 (1915) ("intervening petitioners . . . are entitled to be originally heard concerning the settlement of the decree insofar as it might operate prejudicially to their rights"). *See also Hunter* v. *Ohio* ex rel. *Miller*, 396 U.S. 879 (1969) (permitting petitioner to intervene but denying *certiorari*); *Banks* v. *Chicago Grain Trammers Association, Inc.*, 389 U.S. 813 (1967) (permitting petitioner to intervene and granting *certiorari*); *Eastern-Central Motor Carriers Association* v. *United States*, 321 U.S. 194, 198 n.5 (1944) (permitting intervention); *cf. Mullaney* v. *Anderson*, 342 U.S. 415, 416-17 (1952) (permitting intervention to remove jurisdictional issue from controversy).

Failure to permit intervention in this instance will jeopardize vital interests of the Board and its members. The Board is an association of employers, with its princi-

pal place of business in the District of Columbia. Its membership consists of more than 1,400 firms doing business in the metropolitan area. These members employ more than 60% of the private workforce within the District of Columbia.

Almost all of the Board's members are subject to the District of Columbia's workers' compensation laws. Those who provide coverage under these laws do so either by purchasing insurance at an estimated annual premium cost of more than $100 million, or as self-insurers who annually expend tens of millions of dollars in payment of benefits. Moreover, the Board as an employer is also subject to these laws. Thus, the Board and its members have a substantial economic interest in, and are vitally affected by, whatever system of workers' compensation is in effect in the District of Columbia. All, therefore, have a substantial interest in petitioners' challenge to the Act.

The Board and its members also have a substantial interest in the scope of the Council's legislative authority. That scope is implicated by these proceedings; thus the disposition of the subject petitions may have a broad, long range effect on the Board's economic interest.

The Board's interests and those of its members differ from those of the District of Columbia. The District is concerned with protecting its institutional interests, only. The Board and its members, however, seek to protect their private economic interests. It was precisely because of such differences between the interests of governmental and private parties that this Court held in *Trbovich* v. *United States*, 404 U.S. 528, 538-39 (1977), it was error to deny the United Mine Workers' application to intervene as a co-party with the Secretary of Labor.

In representing these particular interests, the Board has advanced a number of arguments not presented by the District of Columbia. Many of these arguments should be of assistance to this Court, particularly because the Board's contentions were adopted and applied by the Court of Appeals. Indeed, that court permitted the Board to participate fully at every stage of the appellate proceeding as though the Board was a party. See Supreme Court Rule 19.6 ("All parties to the proceeding in the court whose judgment is sought to be reviewed shall be deemed parties in this Court . . . .)" For these reasons the Board should be permitted to intervene, here, as a party-respondent.

B

In The Event That This Court Should Deny The Board's Motion For Leave To Intervene, The Court Should, In The Alternative, Grant The Board Leave To File Its Brief As Amicus Curiae In Opposition To The Petitions For Certiorari.

Respondent does not object to the Board being permitted to file the accompanying brief as *amicus curiae*. Petitioners, however, have withheld their consent to the Board's participation in any capacity. The Board believes that its brief may aid the Court in determining whether to deny the petitions. Therefore, for all of the reasons set forth above, if the Court does not permit the Board to intervene it should grant leave to the Board to file its brief as *amicus curiae*.

CONCLUSION

For the foregoing reasons this Court should allow the Board to intervene as a party-respondent, or in the alternative, to file its brief as *amicus curiae* pursuant to Supreme Court Rule 36.

Respectfully submitted,

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THE GREATER WASHINGTON BOARD OF TRADE BRIEF IN SUPPORT OF RESPONDENT

INTEREST OF AMICUS CURIAE

Amicus curiae is The Greater Washington Board of Trade ("the Board"). The Board, an association of 1,400 employers, has its principal place of business in the District of Columbia. It and its members employ more than 60% of the private workforce in the District of Columbia, and annually expend more than $100 million to provide workers' compensation benefits. Almost all of the Board's members were subject to the District of Columbia Workmen's Compensation Law, and now are subject to the superseding District of Columbia Workers' Compensation Act that petitioners challenge, here.

STATEMENT OF THE CASE

A

Public employees of the District of Columbia government were first protected by a workers' compensation program in 1919. 5 U.S.C. §§ 8101(1)(D), 8139 (1976). No similar program existed, however, for their counterparts in the local private sector until 1927, when Congress enacted the Longshoremen's and Harbor Workers' Compensation Act ("the Longshoremen's Act"), 33 U.S.C. § 901 *et seq.* (1976).

The Longshoremen's Act was enacted in discharge of the exclusive authority granted to the federal government by Article III, cl. 2 of the Constitution over "all Cases of admiralty and maritime Jurisdiction," *Crowell* v. *Benson*, 285 U.S. 22, 40-41 (1932), to protect employees engaged in the maritime industry. *Id.* It represented the first successful effort by Congress to respond to a social problem that it regarded as essentially local in nature. *Id.*, 285 U.S., at 40 n.5. In these prior efforts Congress had sought to provide workers' compensation coverage for maritime employees by, *inter alia*, delegating authority to the States to enact or administer similar legislation; however, each effort was held to represent an unconstitutional effort to transfer what was regarded as a nondelegable federal power conferred by Article III. See *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917); *Knickerbocker Ice Company* v. *Stewart*, 253 U.S. 149 (1920). Thus it was only because of this Court's since modified views as to the geographical reach of Article III, cl. 2, see, *Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715 (1980), that the Longshoremen's Act was enacted. *Crowell* v. *Benson*, *supra*, 285 U.S., at 40 n.5.

Under the Longshoremen's Act the District of Columbia is defined as a State. 33 U.S.C. § 901(8)(1976). Therefore only those employees in the District of Columbia

engaged in the maritime industry have been protected by the Longshoremen's Act. See, *Gudmundson* v. *Cardillo*, 126 F.2d 521, 525 (D.C. Cir. 1942). To fill this void, and expand the class of private employees in the District of Columbia protected by workers' compensation, see S. Rep. No. 852, 70th Cong., 1st Sess., at 1 (1928); H.R. Rep. No. 859, 69th Cong., 1st Sess., at 1 (1926), in 1928 Congress enacted the "Workmen's Compensation Law of the District of Columbia" (the "Workmen's Compensation Law"), D.C. Code Ann. § 36-501 *et seq.* (1973). That law applied the provisions of the Longshoremen's Act to the District of Columbia. *Id.* But, unlike the Longshoremen's Act which Congress had enacted pursuant to its authority under Article III, the Workmen's Compensation Law was enacted as a "local act" in an exercise of Congress' plenary authority over the District of Columbia granted by Article I, sec. 8, cl. 17, *Gudmundson* v. *Cardillo*, *supra*, 126 F.2d at 525, and did *not* provide coverage for injury or death arising out of employment in the maritime industry. D.C. Code Ann. § 36-502 (1973).

However, because the Workmen's Compensation Law applied the provisions of the Longshoremen's Act, it was administered by the Secretary of Labor, see 33 U.S.C. § 939 (1976),—albeit commencing in 1973 the cost to the Secretary of Labor of administering it was paid with funds authorized in the budget for the District of Columbia. Pub. L. 93-140, D.C. Code Ann. 1981, note preceding § 36-301. For the same reason, the United States courts of appeals had authority to review compensation awards and the United States district courts had authority to enforce those awards. See 33 U.S.C. §§ 921(c), (d) (1976). Thus until enactment by the Council of the District of Columbia of the superseding legislation challenged, here, the local workers' compensation program was administered on behalf of the local government by federal officials.

B

In 1973, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act ("the Self-Government Act"), Pub. L. 93-198, (codified, as amended, in scattered sections of D.C. Code Ann. (1981), to "relieve [itself] of the burden of legislating upon essentially local matters." D.C. Code Ann. § 1-201(a) (1981). The Self-Government Act, as its full title conveys, had two primary purposes: one was to provide a form of local self-government which the electorate of the District of Columbia could elect to adopt; the other was to reorganize the existing District of Columbia government "irrespective of whether the charter for greater self-government provided for in Title IV of this Act is accepted or rejected by the registered qualified electors of the District of Columbia." Self-Government Act, D.C. Code Ann. § 1-201(b) (1981); see, also, H.R. Rep. No. 482, 93d Cong., 1st Sess., at 1-2 (1973). Thus Title II of the Self-Government Act reorganized the pre-existing local government, and transferred authority over certain local matters from federal officials to the pre-home rule District of Columbia government. One of the programs transferred to the pre-home rule local government as part of this reorganization scheme was the local workers' compensation programs for public employees of the District of Columbia government, a program that previously had been administered by the Secretary of Labor pursuant to 5 U.S.C. § 8101 *et seq.* (1976). Self-Government Act, § 204(e), 87 Stat. 783.

The self-government charter was adopted in 1974. Therefore, since then, the legislative authority of the District of Columbia has "extend[ed] to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of [the Self-Government] Act," Self-Government Act, D.C.

Code Ann. § 1-204 (1981), subject to certain enumerated limitations. The only limitations which are important here are codified at D.C. Code Ann. § 1-233 (1981):

> (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:
>
> . . . .
>
> (3) [e]nact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;
>
> (4) [e]nact any act, resolution, or rule with respect to any provision of Title II [of the District of Columbia Code] (relating to organization and jurisdiction of the District of Columbia courts);
>
> . . . .
>
> (8) [e]nact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshall for the District of Columbia[;]
>
> . . . .
>
> (b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any federal agency, than was vested in the Commissioner prior to January 2, 1975.

On 6 May 1980, the Workmen's Compensation Law was superseded upon the enactment by the Council of the

District of Columbia Workers' Compensation Act of 1979 (the "Act"). Following the approval of the Mayor, the Act was forwarded to Congress for review pursuant to D.C. Code Ann. § 1-233(c)(1) (1981). There was no effort in Congress to disapprove the measure, and on 1 July 1980 the Act took effect as D.C. Law 3-77. See 27 D.C. Reg. 2974 (1980).[1]

The Act, D.C. Code Ann. § 36-301 *et seq.* (1981), establishes a compensation program for death and work-related injuries suffered by employees of private businesses arising out of employment "principally localized in the District of Columbia." D.C. Code Ann. § 36-303 (1981). Any party adversely affected by a compensation award may petition for review by the District of Columbia Court of Appeals. *Id.*, § 36-322(b)(3). If an employer fails to comply with a compensation order, the order may be enforced in the Superior Court of the District of Columbia. *Id.*, § 36-322(c). In summary, under the Act the benefits program for injury and death arising out of employment "principally localized in the District of Columbia," which previously were subject to the Workmen's Compensation Law, is administered and enforced by officials of the local government; and the similar program providing benefits for those injuries and deaths which previously were covered by the Longshoremen's Act continues to be enforced by federal officials pursuant to the latter act.

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[1] The superseded Workmen's Compensation Law, which the court in *Gudmundson* referred to as a "local act," seems always to have been regarded as a "District of Columbia law." *See, e.g., Cardillo* v. *Liberty Mutual Insurance Company*, 330 U.S. 469, 479 (1947); *Thomas* v. *Washington Gas Light Company*, 448 U.S. 261, 262 (1980). Therefore, Congress, in debating the 1972 amendments to the Longshoremen's Act, believed it would be subject to the legislative authority of the District of Columbia once self-government was granted. See 118 Cong. 36382, 36386 (14 Oct. 1972).

C

In July 1980, the Greater Washington Central Labor Council ("the Labor Council") and three individuals in private employment filed an action in the Superior Court of the District of Columbia against the District of Columbia, seeking a declaratory judgment that the Act was *ultra vires*, and an injunction against its enforcement. Both sides moved for summary judgment. On 26 September 1980, the trial court ruled that the Act was *ultra vires* because barred by D.C. Code Ann. § 1-233(a) and (b) (1981), (quoted *supra*, at p. 5).

Final judgment was entered on 1 October 1980, and the District of Columbia noted a timely appeal.[2] Thereafter, the Food and Allied Service Trade Council of Metropolitan Washington ("the Trade Council") was permitted to intervene on behalf of the Labor Council. On 28 January 1982, the District of Columbia Court of Appeals reversed the decision of the trial court. *District of Columbia* v. *Greater Washington Central Labor Council*, 442 A.2d 110 (D.C. 1982).

In reversing, the Court of Appeals held that the Workmen's Compensation Law had been a "local act," and workers' compensation for private employment was a subject of local concern over which the Self-Government Act authorized the Council to legislate. It further held

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[2] The Board was not named as a party to the proceedings in the trial court. However, immediately following the trial court's decision holding the Act *ultra vires* the Board sought leave to intervene, and moved to vacate the judgment. Following the denial of its motions the Board appealed. Although the Court of Appeals held the denial of the motion to intervene was not an abuse of discretion, it permitted the Board to participate fully in the appeal as though it was a party, and adopted the Board's arguments on the merits.

that the functions which the Secretary of Labor and the federal courts had performed under the superseded legislation had been local, and not federal. It therefore concluded that enactment of the Act had not violated the limitations on the Council's authority set forth in D.C. Code Ann. §§ 1-233(a)(3), (4), (8), (b) (1981) (quoted *supra* at p. 5) because the Act did not amend the Longshoremen's Act, nor affect the authority or jurisdiction conferred on any federal officer by the Constitution or any legislation of Congress.

Thereafter, the Trade Council and the Labor Council petitioned the District of Columbia Court of Appeals for rehearing *en banc*. The court denied these petitions in an order entered on 28 April 1982. On 20 July 1982, the Labor Council petitioned the Supreme Court for a writ of certiorari. The Trade Council followed suit on 26 July 1982. Both petitions have been consolidated by the Court.

SUMMARY OF REASONS FOR DENYING THE PETITIONS

By the Self-Government Act Congress delegated to the District of Columbia its authority to legislate upon essentially local matters such as workers' compensation. Therefore, the Council for the District of Columbia was authorized to adopt the Workers' Compensation Act as superseding local worker's compensation legislation.

Petitioners argue that the Workers' Compensation Act violated several limitations on the Council's legislative authority enumerated in § 602(a) and (b) of the Self-Government Act, D.C. Code Ann. § 1-233(a),(b) (1981). In fact, however, the Act satisfies each of these limitations. The Act repealed only local legislation, and not an Act of Congress relating to a Federal function; it does not pertain to, nor affect the jurisdiction of either the District of Columbia courts or the United States courts in the

District of Columbia; nor does it grant the District of Columbia authority over a federal agency or a federal function.

Rather the Act did no more than establish a local program of workers' compensation, and authorize review and enforcement of compensation awards in the District of Columbia courts pursuant to the jurisdiction over local matters which Congress had transferred, in 1971, to those courts from the United States.

In summary, the Act neither amended the Longshoremen's Act, nor affected the authority or jurisdiction conferred on any federal officer by the Constitution or any legislation of Congress.

REASONS FOR DENYING THE PETITIONS

A

Petitioners Have Failed To Present Any Question Warranting The Exercise Of This Court's Discretionary Jurisdiction.

Petitioners advance no ground for review conceivably falling within the standards governing discretionary review on writ of certiorari. See Supreme Court Rule 17. This proceeding involves no more than the construction of the Self-Government Act, legislation which involves only a matter of purely local significance in the District of Columbia. Nor do petitioners contend that the Act offends any particular constitutional provisions. Under such circumstances, absent a clear showing of egregious error, this Court consistently has refused to exercise its jurisdiction. See *Whalen* v. *United States*, 445 U.S. 684, 687 (1980).[3] Here, there has been no showing of egregious

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[3] In *Whalen*, all members of the Court reaffirmed this principle. *Id.*, at 695-96 (White, J., concurring); *id*, at 696 (Blackmum, J., concurring); *id*, at 707 (Rehnquist, J., concurring).

error, nor is there any basis for such a showing. Therefore the petitions should be denied.

B

The District Of Columbia Court Of Appeals Properly Decided That The Self-Government Act Authorized The Council To Enact A Workers' Compensation Program For Private Employees In The District Of Columbia.

Congress passed the Self-Government Act to "relieve [itself] of the burden of legislating upon essentially local District matters." D.C. Code Ann. § 1-201(a) (1981). It therefore explicitly provided "the legislative power of the District of Columbia shall extend to all rightful subjects of legislation within the District . . ." Thus the legislative power of the District of Columbia is "as broad as the police power of a state." *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100, 110 (1953).

Workers' compensation always has been regarded by Congress as essentially a local matter. See, *Crowell* v. *Benson*, 285 U.S. 22, 40 n.15 (1932); see, generally, Larson, The Law of Workmen's Compensation, §§ 5.20, 5.30 (78 ed.). Because it is one of "those subjects upon which [local] legislatures have been accustomed to act," *Christianson* v. *King County*, 239 U.S. 356, 365 (1915), it is as much a "rightful subject" of the legislative authority which Congress has delegated to the District of Columbia as the probate laws enacted by the territorial government that were sustained in *Christianson*, and the civil rights measures passed by the District of Columbia that were upheld in *District of Columbia* v. *John R. Thompson Co.*, *supra*. *See, also, Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 716-19 (1980); *Fonseca* v. *Prann*, 282 F.2d 153 (1st Cir. 1960) (upholding authority of Puerto Rico to enact workers' compensation laws). Therefore, the Council was authorized to enact the Act.

Nevertheless, petitioners argue that the fact of the *explicit* transfer of authority by the reorganization provision of the Self-Government Act over the local public workers' compensation program, coupled with the failure by Congress to also enumerate in the self-government provision that the local government could exercise similar authority over the pre-existing program for private employees, creates an inference that Congress did not intend to delegate to the District of Columbia any authority to legislate in respect to the latter. We submit that the most that can be inferred from this fact is that Congress did not grant as great a quantum of power to the pre-home rule government as it did in delegating self-government. Moreover, petitioners' argument is refuted by both the statutory scheme and the legislative history of the Self-Government Act.

All of the powers transferred by Title II of the Self-Government Act are enumerated. In contrast, in the self-government charter Congress delegated a broad scope of legislative power in general terms, and enumerated only the limitations on that legislative power. Therefore, it is not reasonable to conclude that the scope of the authority granted in the charter can be inferred from, or is limited by, that enumerated in the reorganization provisions.

The legislative history of the Self-Government Act clearly reflects that one of Congress' twin purposes was to implement the recommendations of the Commission on the Organization of the Government of the District of Columbia, "*irrespective of whether or not the charter for self-government [was] ratified by the local voters*," H.R. Rep. No. 482, 93d Cong., 1st Sess., 1-2 (1973) (emphasis added), and the Self-Government Act explicity so recites. D.C. Code Ann. § 1-201(b) (1981). Therefore, Title II of the Self-Government Act, entitled "Governmental

Reorganization", took effect six months prior to the effective date of the charter for self-government contained in Title IV. Self-Government Act, § 771(b), 87 Stat. 836. As Title II transferred authority over the public employee workers' compensation program to the pre-home rule government, it defies logic to argue that Congress implicitly intended to deny the home rule government authority to legislate in respect to a substantially similar, and also essentially local matter. Therefore the Court of Appeals, after also noting that "[n]othing in the . . . legislative history of the Self-Government Act indicates Congress' intent to prohibit the District from enacting legislation concerning workmen's compensation for the private sector," *District of Columbia* v. *Greater Washington Central Labor Council, supra*, 442 A.2d at 115, properly rejected petitioners' faulty logic. In summary, because the Self-Government Act provides "the legislative power of the District shall extend to all rightful subjects of legislation within the District . . . ," it cannot be denied that the Council's legislative authority extended to the subject matter of the Act.

C

The District Of Columbia Court Of Appeals Properly Decided That The Workers' Compensation Act Did Not Repeal An Act Of Congress Concerning Functions Of The United States.

Petitioners argue that the Act abolishes a "federal function," namely the authority previously exercised by the Department of Labor over private sector workers' compensation arising out of employment in the District of Columbia. Therefore, they contend the Act violates D.C. Code Ann. § 1-233(a)(3) (1981).

Petitioners' argument obviously begs the question of what is a federal function. It also assumes without apparent logic that Congress intended by § 1-233(a)(3) to

transform a local function which had been performed by a federal official prior to self-government into a function of the United States. It also ignores the legislative history of the Self-Government Act which clearly indicates that the purpose of § 1-233(a)(3), as this provision plainly reflects on its face, is to safeguard the operations of the federal government on a national level. See, *e.g.*, House Comm. on the District of Columbia, 93d Cong., 2d Sess., Title VI Reservation of Congressional Authority, at 1477 (Comm. Print 1973).[4] Therefore, it cannot be said that the functions performed by federal officials under the Workmen's Compensation Law were federal functions.

As we have noted, the Workmen's Compensation Law, which merely applied the provisions of the Longshoremen's Act to private employment in the District of Columbia, seems always to have been considered by Congress and the courts to be a local law. See *supra*, note 1. The reasons for this are apparent: Congress did not, as it might have, intend that the Longshoremen's Act would become the local workers' compensation act; it instead enacted a separate law to achieve that end, *i.e.*, the Workmens' Compensation Law. Thus as the District of

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[4] The term "federal function" appears to have originated in the District of Columbia proposal for home rule:

> The functions reserved to the federal level would be those related to federal operations in the District and to property held and used by the Federal Government for conduct of its administrative, judicial, and legislative operations; and for the monuments pertaining to the nation's past. The functions would include physical planning of these federal areas, construction and maintenance of federal buildings, and administration of federal park areas . . . House Comm. on the District of Columbia 93d Cong., 2d Sess., D.C. Executive Branch Proposal For Home Rule Organic Act, at 182 (Comm. Print. 1973).

Columbia Circuit Court of Appeals explained in *Gudmundson* v. *Cardillo*, *supra*:

> The case we have does not arise under the Longshoremen's Act, though doubtless it might if the injury had occurred on a vessel in the Potomac River, tied to a Washington dock. True enough, the language and provisions of the national Act are made applicable to the District, but the two Acts are wholly separate and distinct, for the reason that in the one Congress was exercising the judicial powers conferred under Art. III, whereas in the other—the local act—Congress was exercising the powers granted in Sec. 8 of Art. I . . . . [126 F.2d, at 525.]

Thus, while it is true that prior to the enactment of the Act both workers' compensation programs were administered by the Department of Labor, it was only when administering the program created by the Longshoremen's Act that the Department was performing a federal function. In administering the other program created by the Workmen's Compensation Law it was performing a purely local function pursuant to the plenary grant of authority to Congress over the District of Columbia. *Gudmundson* v. *Cardillo*, *supra*, 126 F.2d at 525. This assignment by Congress to federal officials of responsibility for local affairs in the District of Columbia, of course, is rooted in history. See, *e.g.*, *Keller* v. *Potomac Electric Power Co.*, 261 U.S. 428 (1923); *Hobson* v. *Hansen*, 265 F. Supp. 18 (D.D.C. 1967). And it always has been recognized that while performing such local functions these federal officials were performing a local, and not a federal function. *Id.* It follows, therefore, that by enacting the Act the Council did not legislate in respect of a federal function, nor purport to expand the authority of the local government over any federal agency.

D

The District Of Columbia Court Of Appeals Properly Decided That The Workers' Compensation Act Did Not Increase The Jurisdiction Of The District Of Columbia Courts.

Petitioners argue that the Act increased the jurisdiction of the District of Columbia courts in violation of D.C. Code Ann. § 1-233(a)(4) (1981), by conferring on those courts new jurisdiction. In fact, however, as the Court of Appeals observed in rejecting this argument, the local court's jurisdiction over such matters as will arise under the Act had been conferred by Congress as of 1971 by the enactment of the District of Columbia Administrative Procedures Act, Pub.L. 90-614, D.C. Code Ann. § 1-1501 *et seq.* (1981), and the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub.L. 91-358, D.C. Code Ann. § 11-101 *et seq.* (1981).[5] The Courts of Appeals

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[5] The Court of Appeals, in rejecting the argument that the Act affected the jurisdiction of the local courts, accurately summarized this history as follows:

> In 1970, Congress enacted the District of Columbia Court Reform and Criminal Procedure Act, D.C. Code 1981, §§ 11-101 *et seq.* (Court Reform Act), to establish a dual court system in this jurisdiction similar to the state court systems. *Thompson* v. *United States*, 179 U.S. App. D.C. 76, 79 n.14, 548 F.2d 1031, 1034 n.14 (1976). It was Congress' intention to alleviate the Article III court's burden of adjudicating local matters and thus to permit those courts to devote their attention to matters having national implications. *Palmore* v. *United States*, 411 U.S. 389, 408-09 (1973). The Court Reform Act established the District of Columbia Court of Appeals and the Superior Court of the District of Columbia and vested these courts with the authority to decide legal issues which solely affect the District of Columbia . . . . By repealing the Workmen's Compensation Law of 1928, the Council has not decreased the jurisdiction of the United States courts in the District of Columbia. Workmen's compensation for the private employment sector in the District of Columbia is a "local matter" over which the Council has authority to legislate and the local courts have jurisdiction to adjudicate. The Council's action merely repealed the con-

therefore was correct in concluding that by these acts Congress had vested in the Superior Court for the District of Columbia and the District of Columbia Court of Appeals plenary jurisdiction to enforce or, in the latter case, review the decisions of local administrative agencies such as those as will arise under the Act. *District of Columbia* v. *Greater Washington Central Labor Council, supra*, 442 A.2d at 117-18.

It, of course, is true that until passage of the Act the local courts had no occasion to rule on workers' compensation matters. Until then the responsibility concerning such matters, when they arose under the Workmen's Compensation Law, was entrusted by Congress to federal officials. But surely it cannot be said that Congress intended by § 1-233(a)(4) to restrict the jurisdiction of the local courts to only those matters about which Congress had legislated, that is to prohibit the local courts from exercising their jurisdiction over new matters regarding which Congress had not acted, but the Council in exercising its authority to legislate as to "all rightful subjects of legislation," decided to act. As this is precisely the irrational logic employed by petitioners, the Court of Appeals was correct in rejecting petitioners' argument.

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gressional incorporation of a national law into local statutes. The United States courts retain their jurisdiction to hear claims arising under the Longshoremen's Act. Thus, by enacting the Workers' Compensation Act, the local legislature did not redefine the authority of the federal courts to rule on Workmen's compensation claims under the Longshoremen's Act in violation of § 1-233(a)(8).

Id., 442 A.2d at 118.

E

The District Of Columbia Court Of Appeals Properly Decided That The Workers' Compensation Act Did Not Affect The Jurisdiction Of The United States Courts In The District Of Columbia.

Petitioners argue that the Act decreased the jurisdiction of the United States courts in the District of Columbia in violation of D.C. Code Ann. § 1-233(a)(8) (1981). The argument is supported by the mere fact that no longer can controversies arise under the Workmen's Compensation Law over which those courts had jurisdiction. The argument is obviously meritless.

Petitioners' argument is premised upon a fundamental error. Contrary to their assumption, neither the Longshoremen's Act, nor the local act applying its provisions, conferred jurisdiction on any federal court. As this Court held in *Crowell* v. *Benson*, *supra*, 285 U.S. at 49-50, citing *The Genesse Chief* v. *Fitzhugh*, 53 U.S. (12 How.) 443, 452 (1851), the jurisdiction of those courts under the Longshoremen's Act is conferred by Article III, cl. 2 which extends "The Judicial Power . . . to all Cases of admiralty and maritime Jurisdiction;" that under the Workmen's Compensation Law exists by virtue of Article I, § 8, cl. 17, *Keller* v. *Potomac Electric Power Co.*, *supra*, and Congress was free to delegate it to the local government. *Palmore* v. *United States*, *supra*. The Court of Appeals therefore was correct in rejecting petitioners' argument.

CONCLUSION

Because of the foregoing, it is respectfully submitted that the petitions for writ of certiorari should be denied.

Respectfully submitted,

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